

COMPLIANCE BOARD OPINION NO. 99-7
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June 28, 1999

Ms. Lucille Jones

The State Open Meetings Compliance Board has considered your complaint that the Pittsville Planning and Zoning Board violated the Open Meetings Act in connection with a meeting held on March 26, 1999. For the reasons stated below, the Compliance Board finds that the Act (1) was not violated even if the discussion at the meeting varied from the topic stated in the notice but (2) was violated when the meeting was held well after its originally announced time and despite statements that it had been canceled.

I

Complaint and Response.

In your complaint, you stated that the Board had advertised a meeting at 7:30 p.m. on March 26 for the purpose of determining the zoning of three parcels of property. When you called the Town office prior to the close of business on March 26, you were informed by the Town Clerk that "the meeting had been canceled by the Chairman ... for lack of a quorum." According to the complaint, this information turned out to be incorrect: "I have since been informed that the meeting was indeed held but was not called to order until 8:50 p.m. and that the discussion that took place was not what had been advertised in the local paper or listed on the agenda that had been prepared for this meeting by the Town Clerk."

In a timely response on behalf of the Pittsville Planning and Zoning Board, Robert A. Eaton, Esquire, confirmed the essential elements of the complaint. Mr. Eaton included a copy of the meeting notice that had been published in a newspaper. The notice stated that the Planning and Zoning Board would hold a meeting on March 26 at 7:30 p.m. for the purpose of determining the zoning of certain parcels. Mr. Eaton pointed out that the description of the meeting, "for the purpose of determining zoning," was inexact; the better form of notice, he suggested, would have been "for the purpose of recommending to the Town Commissioners the rezoning of the particular parcels."

Mr. Eaton also explained how the meeting was initially canceled but then held after all:

The Clerk had been advised by certain members of the [Planning and Zoning Board] that they would not be able to attend the meeting. The Chairman, when discussing this lack of a quorum with the Town Clerk, decided to cancel the meeting. The Town Clerk told the [complainant] and advised a reporter who called from the local paper that the meeting was being canceled. Unfortunately, the individual who had asked for the hearing drove from the Washington, D.C. area for the hearing. Later that night after a quorum was located, at 8:50 p.m., the meeting was held. Unfortunately, this was later than the scheduled time and after the press and a member of the public had been advised that the meeting would not be held.

In a subsequent letter providing additional information at the request of the Compliance Board, Mr. Eaton indicated that only the two callers were told of the cancellation. No notice of the cancellation or of the new meeting time was posted at the meeting site.

In a separate statement dated May 31, 1999, the Chairman of the Planning and Zoning Board, Mr. Joseph D. Berg, indicated that in his conversation with the Town Clerk, they discussed cancellation of the meeting. "However," Mr. Berg wrote, "there was no firm decision ... made nor was anyone on the board notified. Nothing was posted at the town hall to notify the public of the cancellation."

II

Analysis

.This complaint raises two issues about potential violations of the Open Meetings Act: the nature of the discussion, given the description of the meeting's purpose in the notice; and the holding of the meeting at a time well after the published time and after you and a reporter had been told that the meeting was canceled.

As to the first issue, there was no violation. The Compliance Board assumes, without deciding, that the discussion at the meeting went beyond the topic of "determining zoning," as set forth in the notice. Nevertheless, the Planning and Zoning Board was not required by

the Open Meetings Act to state anything about the nature of its intended discussion. The Act simply requires written notice of “the date, time, and place of the session.” §10-506 of the State Government Article. The Act does not require that notice of a meeting disclose the anticipated agenda. *See* Compliance Board Opinions No. 98-9 (December 14, 1998); No. 95-1 (April 13, 1995), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 110, and No. 92-5 (December 22, 1992), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 16. The common practice by public bodies of including basic agenda information in a meeting notice is commendable, but it is not legally required. Therefore, as we stated in a recent opinion, the Compliance Board “will not deem it a violation of the Act if a public body voluntarily provides agenda item information as part of its notice but then changes the sequence of items or adds or deletes items. Were we to do so, we would be expanding a public body’s notice obligations without any basis in the statutory text.” Compliance Board Opinion No. 98-9, at 3.

The Act was violated, however, when the Planning and Zoning Board went ahead with a meeting at 8:50 p.m. when the meeting was scheduled for 7:30 p.m. and when two people had been told that the meeting was canceled. If, as here, members of the public are given notice that an open session is to begin at 7:30 p.m., then the session cannot be rescheduled for a starting time more than one-and-a-half hours later without an amended notice telling the public of the change in time. The problem was compounded when the meeting was belatedly held even after those who asked were informed that the meeting had been canceled. The problem is not that they were so told, because it appears that the meeting had indeed been canceled at the time. The problem, rather, is that they were *not* told of the subsequent decision to go forward with the meeting, once a quorum had been established.

A general rule under the Act is that a session is not genuinely “open” unless “members of the public are, as a practical matter, able to attend.” Compliance Board Opinion No. 93-8 (July 16, 1993), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 44. For example, we found a violation when a presiding official announced the adjournment of a meeting but then resumed discussion after members of public had left. Such a subsequent discussion, we concluded, “is not held in an ‘open session’ ... even if the door to the room remains open. As a practical matter, this manner of proceeding would cause a reasonable member of the public to conclude that the meeting was over.” Compliance Board Opinion No. 96-4 (May 1, 1996), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 162. Similarly, a reasonable member of the public would surely conclude that a 7:30 meeting said by the Town Clerk to have been canceled would not be held that same night at 8:50 p.m.

Mr. Eaton himself acknowledged that, under these circumstances, “the meeting should either not have been canceled, or once canceled, should have been properly rescheduled.” We agree, and find that the Planning and Zoning Board’s holding of the meeting at 8:50 p.m. on March 26 violated the Act.

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.
Courtney McKeldin
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